

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
COONEY-McHUGH, INC. and)
DONALD HOSKINS,)
)
Appellants,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 77-181

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$100 civil penalty for outdoor burning allegedly in violation of Section 8.05 of respondent's Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Tacoma, Washington on April 10, 1978. Hearing examiner William A. Harrison presided. The hearing was held on an informal basis.

Appellants appeared through D. C. McHugh, Corporate Treasurer. Respondent appeared by and through its attorney, Keith D. McGoffin. The proceedings were not recorded.

1 Witnesses were sworn and testified. Exhibits were examined.

2 Having heard the testimony and examined the exhibits, and being fully
3 advised, the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this
7 Hearings Board a certified copy of its Regulation I containing
8 respondent's regulations and amendments thereto of which official
9 notice is taken.

10 II

11 The appellants are a building-contractor corporation and its
12 employee. The corporation has a storage yard on South 32nd in Tacoma,
13 Washington.

14 On November 3, 1977, appellant Donald Hoskins, an employee of the
15 appellant corporation, ignited an outdoor fire upon the premises of the
16 storage yard.

17 III

18 The fire consisted of building materials collected from a job site
19 and brought to the storage yard. The dimensions of the fire were
20 approximately six feet in diameter by two feet high.

21 IV

22 The appellant corporation normally disposes of building material
23 wastes by trucking them to a dump site. This occasion was a departure
24 from that practice and undertaken by the employee, Hoskins, as an
25 expedient to speed up disposal. Neither Hoskins nor his foreman thought
26 to apply to respondent for an outdoor burning permit. The three officei

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1 of the appellant corporation are aware of the necessity of such a permit
2 but they were not present at the storage yard on the day in question.
3 They had not instructed their employees on the necessity of an outdoor
4 fire permit because outdoor burning is not normal practice.

5 V

6 The smoke plume from the fire attracted the attention of respondent's
7 inspector while he was on routine patrol. Appellants had not applied
8 for, nor obtained, any outdoor fire permit from respondent. Both
9 appellants, Cooney-McHugh, Inc. and Donald Hoskins, received Notice
10 and Order of Civil Penalty No. 3583, assessing a civil penalty in the
11 amount of \$100. From this penalty, appellants appeal.

12 VI

13 The appellants have no prior record of any violation of the
14 regulations of respondent.

15 VII

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings, the Pollution Control Hearings Board comes
19 to these

20 CONCLUSIONS OF LAW

21 I

22 The Legislature of the State of Washington has enacted the following
23 policy on outdoor fires:

24 Limited outdoor burning--Policy. It is the policy of the
25 state to achieve and maintain high levels of air quality and
26 to this end to minimize to the greatest extent reasonably
possible the burning of outdoor fires. Consistent with this
policy, the legislature declares that such fires should be

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1 allowed only on a limited basis under strict regulation and
2 close control. RCW 70.94.740.

3 Pursuant to this and other legislative authority the respondent has
4 adopted Regulation I, Section 8.05 which is cited in the Notice and
5 Order of Civil Penalty. That section states:

6 OTHER BURNING

7 It shall be unlawful for any person to cause or allow any
8 outdoor fire other than land clearing burning or residential
burning except under the following conditions:

9 (1) Prior written approval has been issued by the Control
Officer or Board; and

10 (2) Burning is conducted at such times and under such
conditions as may be established by the Control Officer or
11 Board.

12 II

13 The outdoor fire of building materials, ignited on a commercial
14 site (storage yard), without respondent's prior written approval is a
15 violation of respondent's Regulation I, Section 8.05. Appellant Hoskins
16 was acting within the scope of his employment with the appellant
17 corporation when he ignited the fire, and therefore both he and the
18 corporation are liable to respondent for an appropriate civil penalty.

19 III

20 It is the responsibility of each citizen to become aware of and
21 to adhere to air pollution control rules such as respondent's
22 Regulation I. Because, however, this violation is the first offense
23 against respondent's Regulation I by either appellant, part of the
24 penalty assessed should be suspended.

25 IV

26 Any Finding of Fact which should be deemed a Conclusion of Law is

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1 hereby adopted as such.

2 From these Conclusions, the Board enters this

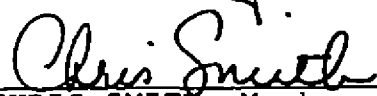
3 ORDER

4 The \$100 civil penalty is affirmed as to both appellants; provided,
5 however, that \$50 is suspended on condition that appellants not violate
6 respondent's regulations for a period of one year from the date of each
7 appellant's receipt of this Order.

8 DONE at Lacey, Washington, this 19th day of April, 1978.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 DAVE J. MOONEY, Chairman

12 
13 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,
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